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 CITY OF EAST PALO ALTO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PALO MOBILE ESTATES ASSOCIATES,
 a California limited partnership,

Plaintiff,

v.

CITY OF EAST PALO ALTO, a municipal
 corporation; DOES 1 through 10, inclusive,

Defendants.

CASE NO: C 07-03601 PJH

**JOINT CASE MANAGEMENT
 CONFERENCE STATEMENT OF
 DEFENDANT CITY OF EAST PALO
 ALTO AND PLAINTIFF PALO
 MOBILE ESTATES ASSOCIATES**

Superior Court Action Filed: June 12, 2007
 Removed to Federal Court: July 12, 2007
 Trial Date: None Set

The Defendant City of East Palo Alto (“the City”) and the Plaintiff Palo Mobile Estates Associates (“PME”) hereby submit the following joint case management conference statement.

Introductory Statement

The City and PME respectfully request that the Court stay this matter, including discovery, until the related petition for a writ of mandate in the San Mateo County Superior Court has been resolved.

1 This case is a challenge to an ordinance enacted by the City of East Palo Alto that created
 2 regulations for applications to convert rental mobilehome parks into resident-owned mobilehome
 3 parks (“the Ordinance”). PME owns a rental mobilehome park in the City which it would like to
 4 convert into a resident-owned mobilehome park. PME seeks a declaration that the Ordinance is
 5 invalid, an injunction to prevent the City from enforcing the Ordinance, and monetary
 6 compensation because PME contends the Ordinance, as well as the moratorium City had imposed
 7 on mobilehome park conversions within the City prior to the adoption of the Ordinance (“the
 8 Moratorium”), has effected a taking of its property without just compensation.

9 On November 13, 2007, PME filed a petition for a writ of mandate in the San Mateo
 10 County Superior Court challenging the validity of the Ordinance under California law.

11 The parties have discussed the conduct of this action and have agreed that it would be most
 12 efficient to first resolve the petition for a writ of mandate in the San Mateo County Superior Court
 13 before proceeding with this action, because the resolution of the writ of mandate will likely have a
 14 significant effect on the claims in this case. The parties therefore respectfully request that this
 15 action be stayed pending the resolution of the petition for a writ of mandate in the San Mateo
 16 County Superior Court. The parties request that this stay include a stay on discovery.

17 **Specific Issues Required to Be Addressed in This Statement by the**
 18 **Standing Order for Joint Case Management Conference Statements**

19 **1. *Jurisdiction and Service:***

20 This Court has subject matter jurisdiction because the Third Cause of Action arises under
 21 the Fifth and Fourteenth Amendments of the United States Constitution, asserting a taking of the
 22 plaintiffs’ property for a non-public purpose and without just compensation.

23 All parties have been served.

24 **2. *Facts:***

25 PME owns a rental mobilehome park in the City of East Palo Alto that it would like to
 26 convert into a resident-owned mobilehome park.

27 On March 13, 2007, the City Council of the City of East Palo Alto enacted a 45-day
 28 Moratorium on the conversion of rental mobilehome parks into resident-owned parks (“the

1 Moratorium”). The stated reason for the Moratorium was to prepare regulations for such
2 conversions. On April 24, 2007, the City Council of the City of East Palo Alto extended the
3 Moratorium to July 27, 2007. During the Moratorium, the City would accept and process
4 applications for the conversion of rental mobilehome parks into resident-owned parks, but it
5 would not approve such applications.

6 On June 12, 2007, PME filed two lawsuits in the San Mateo County Superior Court
7 challenging the Moratorium. One lawsuit petitioned for a writ of mandate invalidating the
8 Moratorium, while the other lawsuit sought declaratory relief, an injunction, and monetary
9 compensation for damages allegedly suffered by PME due to the Moratorium. PME alleges that it
10 suffered damages of not less than \$14,625,000 due to the Moratorium. The lawsuit seeking
11 damages was removed to this Court because PME alleged that the Moratorium was a taking of
12 property without compensation in violation of the United States Constitution.

13 In the lawsuit seeking a writ of mandate that remained in the San Mateo County Superior
14 Court, PME brought a motion for the writ. The motion was heard on July 20, 2007, and the court
15 denied the writ “without prejudice to renew because the claim is not ripe and the Moratorium will
16 expire on July 27, 2007.” Judgment was entered in favor of the City on October 22, 2007.

17 The Moratorium expired on July 27, 2007 and was not renewed by the City.

18 During the pendency of the Moratorium, PME submitted documents for an application to
19 convert its mobilehome park from a rental park into a resident-owned park. The City’s Planning
20 Manager determined that the application was incomplete. PME disagreed with this determination,
21 but submitted some of the further documentation requested by the City. The Planning Manager
22 has determined that the application is still incomplete. PME has appealed this determination to the
23 Planning Commission. PME may seek a writ of mandamus to compel the City to deem the
24 application complete and set it for hearing pursuant to Government Code section 66427.5.

25 On July 17, 2007, the City Council of the City of East Palo Alto enacted the Ordinance.
26 On November 13, 2007, PME filed a new petition for a writ of mandate in the San Mateo County
27 Superior Court challenging the validity of the Ordinance, and PME supplemented its complaint in
28

1 this action to add a claim for damages, alleging that the Ordinance is a taking of its property, and
2 seeking declaratory and injunctive relief against the Ordinance.

3 **3. Legal Issues:**

4 a. Whether the Ordinance is preempted by, or conflicts with, section 66427.5 of the
5 California Government Code. *El Dorado Palm Springs, Ltd. v. City of Palm Springs*, 96 Cal. App.
6 4th 1153 (2002).

7 b. Whether the Ordinance effected a taking of PME's property without just
8 compensation in violation of the Fifth and Fourteenth Amendments to the United States
9 Constitution and Article I, Section 19 of the California Constitution.

10 c. What the proper method for determining and calculating just compensation would
11 be if the Court determines the Ordinance has effected a taking of PME's property without just
12 compensation. *Palazzolo v. Rhode Island*, 533 U.S. 606, 617-18 (2001); *Penn Cent. Transp.*
13 *Co. v. City of New York*, 438 U.S. 104 (1978).

14 d. Whether PME's takings claim is ripe for review. *Kinzli v. City of Santa Cruz*, 818
15 F.2d 1449, 1453-54 (9th. Cir. 1987).

16 **4. Motions:**

17 The City expects to bring a motion for summary judgment.

18 **5. Amendment of Pleadings:**

19 No amendments to the pleadings are anticipated.

20 **6. Evidence Preservation:**

21 The parties have not taken any specific actions to preserve evidence.

22 **7. Disclosures:**

23 The parties have not made the initial disclosures required by Rule 26(a) of the Federal
24 Rules of Civil Procedure. Because the parties are requesting that the Court stay the case, we both
25 ask that the initial disclosures be delayed until the case resumes.

26 **8. Discovery:**

27 No discovery has occurred in this case, and the parties ask that discovery be stayed until
28 the resolution of the petition for a writ of mandate by the San Mateo County Superior Court.

1 **9. Class Actions:**

2 This is not a class action.

3 **10. Related Cases:**

4 As discussed above, there was a related action in the San Mateo County Superior Court
5 (*Palo Mobile Estates Associates v. City of East Palo Alto*, case number CIV 463681). It was a
6 petition for a writ of mandate that sought to overturn the Moratorium. The court denied the writ
7 “without prejudice to renew because the claim is not ripe and the moratorium will expire on
8 July 27, 2007” and judgment was entered in favor of the City.

9 On November 13, 2007, PME filed a new petition for a writ of mandate in the San Mateo
10 County Superior Court. (*Palo Mobile Estates Associates v. City of East Palo Alto*, case number
11 CIV 467731.) This new petition challenges the Ordinance.

12 **11. Relief:**

13 PME seeks:

- 14 a. A declaration that the Ordinance violates section 66427.5 of the California
15 Government Code and is therefore invalid,
16 b. An injunction to prohibit the City from enforcing the Ordinance, and
17 c. Damages of at least \$14,625,000.

18 The City contends that the Ordinance is valid and that therefore the declaratory relief and
19 the injunctive relief sought by PME should be denied. The City also contends that PME’s claim
20 for damages cannot succeed because the Ordinance does not constitute a taking and because this
21 claim is not ripe for review and cannot be ripe for review until PME has at least submitted a
22 complete application and had that application denied.

23 The City further contends that if PME can establish that the Ordinance constitutes a taking,
24 the City contends that damages will be difficult to determine because they are very speculative.
25 PME will have to show that it would have obtained profits that, but for the temporary Moratorium,
26 it will now not obtain.

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28 ///

1 **12. *Settlement and ADR:***

2 The parties agree that ADR is not practicable in this case. The case turns on the legality of
3 legislative actions taken by the City. The City's decision is rooted in matters of public policy, and
4 is not one that the City can agree to change.

5 **13. *Consent to Magistrate Judge for All Purposes:***

6 The City consents to all further proceedings, including trial and judgment, being conducted
7 by a magistrate judge. PME does not.

8 **14. *Other References:***

9 This case is not suitable for binding arbitration, a special master, or the Judicial Panel on
10 Multidistrict Litigation.

11 **15. *Narrowing of Issues:***

12 The City suggests that the trial be bifurcated between liability and damages and that there
13 first be a trial on liability. If liability is found, then the parties can conduct discovery into
14 damages, which is likely to depend on experts, and then there would be a trial to determine
15 damages.

16 **16. *Expedited Schedule:***

17 This case is not appropriate for expedited procedures.

18 **17. *Scheduling:***

19 The parties request that the case be stayed pending the ruling of the Superior Court on
20 PME's petition for a writ of mandate. When the case restarts a further case management
21 conference can be held to determine scheduling.

22 **18. *Trial:***

23 If the trial is bifurcated, each phase of the trial should take two to three days. PME seeks a
24 jury trial on the issue of damages.

25 **19. *Disclosure of Non-Party Interested Entities or Persons:***

26 For the City: The City has not filed a "Certification of Interested Entities or Persons"
27 because it is a government entity. However, the City considers the current residents of the Palo
28

1 Mobile Estates mobilehome park to be interested parties who could be substantially affected by
2 the outcome of this case.

3 For PME: PME filed a "Certification of Interested Entities or Persons" on October 25,
4 2007. The partners of Palo Mobile Estates Associates are as follows:

- 5 a. Allene Kirchner
- 6 b. Coletta S. Sitney & Jan M. Miller
Trustees, U/T/D/ DTD 10/9/87
- 7 c. Betty Watson
- 8 d. Lawrence Small & Florence Small
9 As Joint Tenants WROS
- 10 e. Harold Pat Paterson
- 11 f. Glen R. Johnson & Julie Dees Johnson
TTEES Johnson Family Trust dtd 9/30/99
- 12 g. The 2005 Ellis Family Trust
13 H. James Ellis & Vicki M. Ellis, TTEES
- 14 h. Bypass Trust of the MJAK Family Trust
Patrick B. Impett, Trustee
- 15 i. Wendy Robinson
- 16 j. Seena N. Hoose Separate Property Trust
17 Seena N. Hoose, Trustee
- 18 k. Gary Light, Trustee for Vic Hubbard
Speed & Marina Corp., PST
- 19 l. Alice M. Brady
- 20 m. Douglas Kirchner
- 21 n. Diane Kirchner Scott
- 22 o. Jan Kirchner Carrier
- 23 p. Ira & Jeanne Andersen Trust 82749
- 24 q. Ronya Robinson
- 25 r. Sandra Osborn
- 26 s. Jean Walter
- 27
- 28

1 **20. Other Matters:**

2 None.

3
4 Respectfully submitted,

5 Dated: 11/28/07

JARVIS, FAY & DOPORTO, LLP

6
7 By: /s/ Benjamin P. Fay
8 Benjamin P. Fay
9 Attorneys for Defendant
 CITY OF EAST PALO ALTO

10 Dated: 11/28/07

GILCHRIST & RUTTER

11
12 By: /s/ Thomas W. Casparian
13 Thomas W. Casparian
14 Attorneys for Plaintiff
 PALO MOBILE ESTATES ASSOCIATES